

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

STEVEN CURTIS LEECH,

Plaintiff,

v.

SGT. GARCIA, et al.,

Defendants.

Case No. 2:23-cv-00794-AN

ORDER

NELSON, District Judge.

On November 29, 2023, Plaintiff filed a motion for Leave to File Amended Complaint (#14) in this prisoner civil rights case. A party submitting a written motion to the court is required to serve the motion upon every party to the lawsuit. Fed. R. Civ. P. 5(a). Such motions must also include a certificate of service. Fed. R. Civ. P. 5(d)(1).

Plaintiff's Motion does not include a certificate of service. Based upon the lack of a certificate of service, coupled with the lack of any response from Defendant Garcia, the Court is left to conclude that Petitioner failed to serve a copy of his Motion to Amend on counsel for Defendant Garcia.¹ Moreover, because Plaintiff filed his Motion to Amend more than 21 days

¹ Defendant Garcia is currently the only identifiable Defendant in this case, with all other Defendants named as "Doe" Defendants.

after Defendant Garcia filed the Answer in this case, Plaintiff is not entitled to amend simply as a matter of right. Fed. R. Civ. P. 15(a)(1). Accordingly, the Motion to Amend is denied. Because Plaintiff filed his Motion for Summary Judgment (#17) after his Motion to Amend, the Motion for Summary Judgment is denied because: (1) Plaintiff necessarily intended the dispositive motion to support the proposed amended complaint which shall remain unfiled; and (2) the original Complaint (#2) remains the operative pleading in this case.²

Also before the Court is Plaintiff's Motion to Compel Discovery (#16). That Motion not only lacks a certificate of service, but does not comply with Local Rule 37-1 which requires such motions to contain "the pertinent interrogatory, question, request, response, and/or objection, together with the legal arguments of the party." The Motion to Compel is therefore denied.

Plaintiff's second Motion for Appointment of Counsel (#15) is denied for the reasons identified in the Court's Order (#6) dated July 5, 2023.


CONCLUSION

Plaintiff's Motion to Amend (#14), Motion for Appointment of Counsel (#15), Motion to Compel (#16), and Motion for Summary Judgment (#17) are denied.

IT IS SO ORDERED.

12/14/2023

DATE



Adrienne Nelson
United States District Judge

² The Motion for Summary Judgment also lacks a certificate of service.